GAO/RCED 88-70

United States General Accounting Office

GAO

COMPLETED

Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives

March 1988

FOOD MARKETING

Frozen Pizza Cheese—Representative of Broader Food Labeling Issues

GAO/RCED-88-70

ORIGINAL

GAO
United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-228955

March 31, 1988

The Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

This report responds to your April 28, 1987, letter asking a series of questions about federal regulatory actions related to labeling frozen pizzas whose toppings include a manufactured cheese analog. It also relates the pizza cheese issue to your general concerns about food labeling issues. The report identifies options for dealing with these issues.

As arranged with your office, unless you publicly disclose the contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies to the Director, Office of Management and Budget; the Secretary of Agriculture; the Administrator of the Food Safety and Inspection Service; the Secretary of Health and Human Services; the Commissioner of the Food and Drug Administration; and other interested parties.

This work was done under the direction of Brian P. Crowley, Senior Associate Director. Major contributors to this report are listed in appendix IV.

Sincerely yours,

J. Dexter Peach

J. Dexter Peach
Assistant Comptroller General

Executive Summary

Purpose

Frozen pizza toppings may contain a mixture of traditional cheese and cheese analog, a manufactured alternate whose main ingredient is a mix of vegetable oil and either casein (a milk protein) or soy protein. Controversy exists on whether the presence of cheese analog should be prominently displayed on the pizza box, in addition to being listed on an ingredient panel; what terms, such as "cheese substitute" or "imitation cheese," should be used to identify the analog; and its nutritional value relative to traditional cheese.

The Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked GAO to respond to a series of questions about opposing agency positions regarding the labeling of frozen pizza cheese. GAO also agreed to respond to the Chairman's general concerns about food labeling issues. This report reviews the pizza cheese issue, answers the requester's questions (see ch. 2), and relates the pizza cheese issue to the larger issue of appropriate labeling of all manufactured foods (see ch. 3).

Background

Food labeling is governed by various laws, including the Federal Meat Inspection Act, administered by the U.S. Department of Agriculture (USDA), and the Federal Food, Drug, and Cosmetic Act, administered by the Food and Drug Administration (FDA), Department of Health and Human Services (HHS). FDA regulates frozen pizza products without meat toppings; USDA regulates those with meat toppings.

The two agencies' policies on labeling frozen pizzas containing cheese analog differ. FDA policy, based on enabling legislation and agency regulations, requires that if the cheese topping is not 100 percent traditional cheese, the presence of cheese analog must be disclosed on the front panel of the pizza box. USDA policy, based on its regulations and an administrative labeling memorandum, requires front panel disclosure if the cheese topping on frozen meat-topped pizzas does not contain a prescribed minimum percentage of traditional cheese (currently 10 percent). USDA's position is that front panel disclosure is not needed when the analog has the same organoleptic qualities (taste, feel, smell, and appearance) as the traditional product and when highlighting an alternative ingredient could mislead rather than inform consumers.

A variety of factors make up the food information system that influences individual food purchase behavior. Personal factors play an important role, but information from a variety of external sources, including package labeling, also influences our food purchase habits.

Pertinent, accurate, and useful labeling information helps consumers make the food choices that match their individual nutritional needs. But federal food labeling requirements have developed piecemeal under the agencies' authorizing legislation. In 1980, GAO reported that the two agencies had 119 regulations (35 for FDA and 84 for USDA) covering consumer economic protection and/or product safety. In 1982, GAO reported that piecemeal labeling information had led to regulatory inconsistencies and consumer confusion.

Results in Brief

The pizza cheese analog labeling issue, which affects less than 4 percent of the $15-billion-a-year pizza industry, typifies the inconsistencies in federal food labeling regulations. As the differences in FDA and USDA policies illustrate, the food information system lacks common criteria. In addition, controversies surround the nutritional issues that underlie regulatory decisions. Thus, common criteria for determining the relative nutritional values of manufactured and natural foods are also lacking. The result is uncertain consumers and buying decisions that send confused signals back to the industry. Although prominent labeling legislation could alleviate to some degree the controversy over frozen pizzas containing cheese analog, it would not resolve the underlying food labeling issues.

Principal Findings

Frozen Pizza Cheese Labeling

Unlike FDA, USDA does not require that the presence of cheese analog be disclosed on frozen pizza as long as the prescribed percentage of traditional cheese is used. Opponents of USDA's policy, including the dairy industry and some consumer/public interest groups, argue that consumers want and need to know that the product contains cheese analog. FDA bases its policy on enabling legislation and its implementing regulations; the latter state that a food is misbranded if it is an imitation of another and require the term "imitation" or a descriptive term that is not false or misleading (e.g., "substitute" or "alternate") be used to prominently inform consumers of the replacement. FDA believes that since "real" cheese is a characterizing ingredient that consumers expect in pizza, consumers need to be informed when cheese analog is used. However, FDA has not done sufficient research to confirm consumers' product expectations or labeling needs.

In 1983, USDA proposed revised regulations that would have required prominent display for products containing cheese analog. USDA withdrew the proposal in April 1987, saying that a food manufacturer and others opposing the change had presented persuasive arguments that consumers are made aware of the use of cheese analog through the ingredient panel and that the costs of requiring labeling changes would be unwarranted.

Other issues, including the relative nutritional value of comparable foods, divide groups on both sides of the labeling controversy. For example, the butterfat in traditional cheese contains cholesterol, which many scientists believe contributes to heart disease. Food manufacturers and their proponents, including some consumer/public interest groups, maintain that cheese analog is "healthier" than traditional cheese because it contains less cholesterol and fewer calories. The dairy industry counters that traditional cheese contains trace nutrients not present in cheese analog and that cheese analog contains more sodium and equivalent levels of saturated fat.

Language in the House version of the 1987 budget reconciliation bill (H.R. 3545) would have, among other things, (1) required the presence of cheese analog to be prominently declared on the principal display panel of meat-topped pizzas when less than 75 percent of the total cheese topping is not traditional cheese and (2) applied to all meat-containing frozen food products. However, the language was dropped during the House/Senate conference on the bill. Although not fully resolving all the differences between FDA and USDA regulations on frozen pizza, the legislative changes may have alleviated much of the pizza cheese prominent display controversy. Another way to alleviate the controversy would be for USDA to exercise its authority to exempt products, including meat-topped pizzas, from its jurisdiction by ruling that they are not products of the "meat food industry." Such exempt products are covered under FDA jurisdiction. However, the larger issue of appropriate and consistent food labeling would remain.

The Larger Issue

To facilitate commerce and to satisfy consumer desires to purchase the best foods for their needs, consumers need the clearest, most consistent information possible. In a series of reports between 1975 and 1982, GAO pointed out that food information regulations and programs were conflicting and confusing. These reports presented a framework for addressing food information issues, including a recommendation that all concerned public and private groups participate in an open dialogue to

develop a coordinated, workable approach to collecting and disseminating food information.

The public/private working arrangement that GAO envisioned did not develop. USDA and FDA have made some coordination efforts, but federal labeling legislation and regulations have not kept pace with the explosion of manufactured food products. Compared with about 700 new manufactured foods introduced in 1975 and 1,000 in 1982, nearly 3,400 new manufactured foods were introduced in 1986, and food manufacturers are beginning to use health claims in their advertising. FDA officials told GAO that because information on nutrition and health keeps changing, many of the standards developed years ago to help consumers are now too rigid.

The controversies underlying the pizza cheese issue (piecemeal food legislation and regulations, nutritional equivalence, organoleptic considerations, nomenclature problems, and consumer research needs) are generic to the federal food labeling regulatory process and thus illustrate the need to reconsider the adequacy of the overall food information system.

Matter for Congressional Consideration

The Congress may want to bring together government, industry, and consumer interests in order to review and rewrite the basic authority for food information. Ways of doing so include establishing a congressional commission, recommending a presidential commission, or directing an interagency task force. As a preparatory step, the Congress may wish to hold hearings to more fully determine the extent of current regulatory activity, agency structures that administer the regulatory process, industry and consumer responses to and reliance on the process, and agency activities or plans to improve the process.

Agency Comments

HHS had only technical comments on the draft report. (See app. II.) USDA said that all frozen pizzas would more logically come under FDA authority and that it would pursue the option of exempting meat-topped frozen pizzas from its jurisdiction through the regulatory process. On the issue of the overall food information system, USDA said that it does not recommend that standards and labeling issues be resolved through the legislative process. (See app. III.) GAO believes, however, that it would be appropriate for the Congress to act as a catalyst in developing a coordinated, workable approach to collecting and disseminating food information and that the end result may well be a revision to the basic legislative authority for food information.

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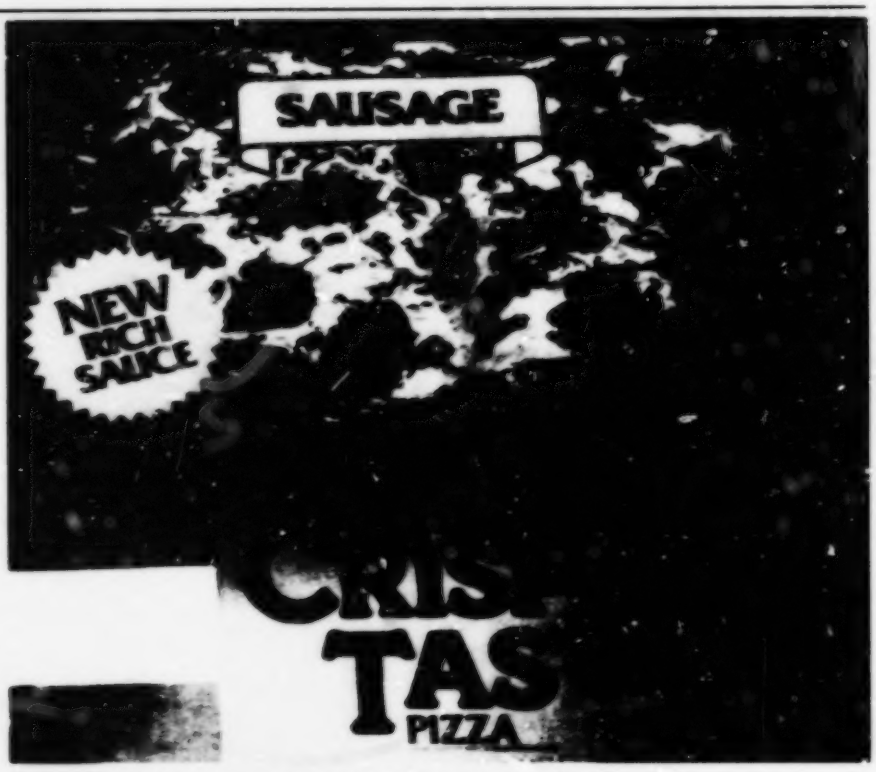
Abbreviations

CED	Community and Economic Development Division
FDA	Food and Drug Administration
FFD&CA.	Federal Food, Drug, and Cosmetic Act
FMIA	Federal Meat Inspection Act
FSIS	Food Safety and Inspection Service
GAO	General Accounting Office
HHS	Department of Health and Human Services
HRD	Human Resources Division
MWD	Manpower and Welfare Division
PPIA	Poultry Products Inspection Act
RCED	Resources, Community, and Economic Development Division
USDA	U.S. Department of Agriculture
U.S. RDA	U.S. Recommended Daily Allowance

Introduction

The dairy industry and the manufactured foods industry sometimes disagree on how to convey information to consumers on food products. One of these disagreements involves the placement of ingredient information on frozen meat-topped pizza packages when the pizza topping contains manufactured cheese analog. The main ingredients in manufactured cheese analog are casein (a milk protein) or soy protein, and a partially hydrogenated vegetable oil, usually soybean oil. Other ingredients include salt, food starch, emulsifiers, stabilizers, and other additives. Although the ingredients are required to be listed on a package's ingredient panel, which is usually in small print on the side or back of the package, the dairy industry maintains that the package's principal display panel (i.e., the large side of the pizza box that contains the product name and typically shows a picture of a pizza) should also contain wording, prominently displayed, that the pizza topping contains an analog. (See fig. 1.1.)

Figure 1.1: Example of a Sausage Pizza Box Principal Display Panel and Side Ingredient Panel



[illegible] CRUST: BLEACHED BROMATED ENRICHED FLOUR (BLEACHED FLOUR, NIACIN, IRON, POTASSIUM BROMATE, THIAMINE MONONITRATE, RIBOFLAVIN), WATER, SOY FLOUR, DRY YEAST, BAKING POWDER (MONOCALCIUM PHOSPHATE, BAKING SODA), SALT, DEXTROSE, HYDROGENATED SOYBEAN OIL, CALCIUM PROPIONATE (PRESERVATIVE), SODIUM STEAROYL LACTYLATE, DRIED WHEY TOPPING: MOZZARELLA CHEESE SUBSTITUTE (WATER, CASEIN, PARTIALLY HYDROGENATED SOYBEAN OIL, SALT, SODIUM ALUMINUM PHOSPHATE, LACTIC ACID, NATURAL FLAVOR, MODIFIED CORN STARCH, SODIUM CITRATE, SODIUM PHOSPHATE, SORBIC ACID (PRESERVATIVE), GUAR GUM, ARTIFICIAL COLOR, MAGNESIUM OXIDE, ZINC OXIDE, VITAMIN A PALMITATE, FERRIC ORTHOPHOSPHATE, VITAMIN B12, RIBOFLAVIN (VITAMIN B2), FOLIC ACID, PYRIDOXINE HYDROCHLORIDE (VITAMIN B6), NIACINAMIDE, THIAMINE MONONITRATE (VITAMIN B1)), COOKED PORK SAUSAGE (PORK, SALT, GARLIC POWDER, SPICE), COOK CHEESE, TEXTURED VEGETABLE PROTEIN (SOY FLOUR, CARAMEL COLOR), DRIED PARSLEY, [illegible] TOMATO PUREE (WATER, SUGAR, MODIFIED CORN STARCH, SALT, HYDROGENATED VEGETABLE OIL (SOYBEAN, COTTONSEED), SPICE, BEET POWDER, HYDROLYZED PLANT PROTEIN, NATURAL FLAVOR, XANTHAN GUM

The dairy industry argues that because consumers expect pizza to contain "real" traditional cheese, prominently displaying the term "contains imitation cheese" or "contains cheese substitute" on the principal display panel would help consumers distinguish between pizzas whose toppings contain only traditional cheese and those whose toppings contain both cheese and manufactured cheese analogs. The manufactured foods industry argues that the proposed qualifying terms, "imitation" and

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"substitute," are perceived to mean less nutritious and less healthful by the typical consumer; adequate information is already available on the package ingredient panel; and most frozen pizzas that contain only "real" traditional cheese prominently disclose this fact through the use of the "Real Seal," a voluntary dairy industry promotion, or the statement "contains 100% natural cheese." (See fig. 1.2.)

Figure 1.2: Example of "Real Seal" on Cheese Pizza Principal Display Panel

Both the U.S. Department of Agriculture (USDA) and the Department of Health and Human Services' (HHS) Food and Drug Administration (FDA) follow FDA's 1973 "imitation foods" regulation (21 CFR 101.3(e)). The regulation, which states the federal position on the qualifying terms "imitation" and "substitute," requires that if a food contains an ingredient that renders the product nutritionally inferior to the product made with the traditional ingredient, the food product be labeled as "imitation." If a food product contains an ingredient that FDA considers nutritionally equivalent, the food product can be labeled as a "substitute" to the food it resembles, or it can be labeled with "an appropriately descriptive term that is not false or misleading." According to USDA Food

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Safety and Inspection Service (FSIS) officials, whose responsibilities include premarket label reviews, USDA relies on FDA regarding questions of nutritional equivalence before making its labeling determinations.

FDA, which has regulatory jurisdiction over non-meat-topped frozen pizzas, requires that if cheese topping on such pizzas is not 100 percent traditional cheese, the presence of imitation or substitute ingredients must be prominently displayed on the principal display panel. USDA, which has regulatory jurisdiction over meat-topped pizzas, requires such pizzas to contain traditional cheese but does not require prominent display as long as sufficient traditional cheese is present in the cheese mixture to "characterize" the product. Currently, USDA requires that at least 10 percent of the cheese mixture be traditional cheese. When at least 1 part in 10 is traditional cheese, USDA requires only that the cheese topping ingredients, including the ingredients in the cheese analog, be listed on the ingredient panel.

In August 1983, based on dairy industry arguments, USDA proposed a labeling requirement change for products containing cheese analogs that would have resulted in USDA's adopting a position on prominent display that was more consistent with FDA's. Although a 1985 USDA draft analysis concluded that consumers expect meat-topped frozen pizzas to contain only traditional cheese, USDA withdrew the proposal in April 1987. According to its Notice of Withdrawal, USDA based its decision on what it called "persuasive" arguments presented by a food manufacturer and other parties that opposed the proposal.

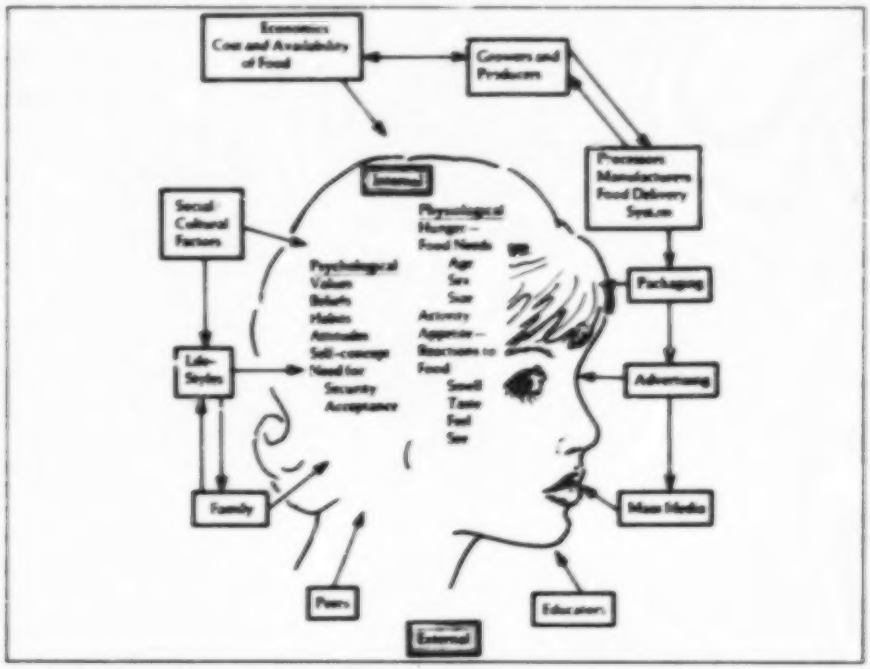
The Pizza Cheese Issue Is Part of Larger Food Information Issue

The pizza cheese issue involves less than 4 percent of the pizza sold in the United States. U.S. pizza sales are about $15 billion annually. Of these sales, about $13.5 billion occur in (1) restaurants and pizza parlors where consumer information is contained primarily in advertising and menus or (2) grocery stores' fresh food cases where deli pizzas are generally not subject to federal labeling requirements. The remaining $1.5 billion in pizza sales are from grocery store frozen food cases. Meat-topped frozen pizzas that contained a traditional cheese/cheese analog mixture had sales of about $570 million in 1986—38 percent of frozen pizza sales by value, but less than 4 percent of total pizza sales. It is these meat-topped frozen pizzas, subject to USDA rulemaking, that are currently at issue.

The pizza cheese issue, however, is only one example of a much larger concern—how to communicate important information about different

foods to the consumer. Important food choices can help create healthier and happier lives for many Americans. Achieving a balanced diet with adequate amounts of all nutrients and calories is essential for growth, reproduction, health, and productive work. Conversely, suboptimal diets may result in ill health, higher medical costs, and less productive workers. Achieving a proper diet can be very difficult without pertinent, accurate, and useful information. Although human beings of the same sex and age group need the same basic nutrients, their individual food choices and eating patterns are influenced by a complex set of personal factors and external sources, including package labeling, as shown in figure 1.3.

Figure 1.3: Influences on Our Food Habits—External and Internal



Source: D. Wenck, B. Baren, and S. Dewan, Nutrition: The Challenge of Being Well Nourished, by Reston Publishing Company, Inc., a Prentice Hall Company, Reston, Virginia, 1980, p. 24.

At a time when the U.S. food industry is looking toward increased productivity and efficiency, and U.S. consumers are requesting varied and healthier food products, federal food information rulemaking is coming under increasing pressure to ensure that consumers are provided with clear descriptions of different food items. Because today's marketplace

consists of over 50,000 mostly manufactured food products, consumers rely on the food information system to help them make informed purchase decisions, and industry relies on consumer feedback to find out which products are in the greatest demand so that it can make proper investment decisions. The marketplace has changed since the 1930s when direct farm-to-consumer food products were the rule. But the federal rulemaking process has not kept pace, resulting in a myriad of regulations and food descriptions that leave the consumer confused and send confused buying signals back to the industry.

Objectives, Scope, and Methodology

In an April 1987 letter, the Chairman of the Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, asked us to respond to a series of questions relating to USDA's decision to withdraw the proposed change to its pizza labeling requirement, the basis for USDA's position, the difference between USDA's and FDA's positions, and the possibility of FDA's developing a specific standard of identity for pizza. The Chairman also asked us what we would recommend to rectify any inconsistencies between USDA's and FDA's labeling standards and regulations relating to the cheese content of frozen pizzas. In a subsequent discussion with subcommittee staff, we agreed to address the Chairman's questions and, where possible, respond to the Chairman's general concerns about the food labeling regulatory process by (1) identifying related food labeling inconsistencies and (2) relating past GAO recommendations on food labeling to the current pizza cheese controversy.

We made our review from June through September 1987 (with updates as appropriate through March 21, 1988) in Washington, D.C., where we met with and obtained information from officials or representatives of the major groups involved with the pizza cheese issue. At USDA we spoke with FSIS and Office of General Counsel officials and examined the pizza labeling proposal docket and FSIS labeling procedures and policy manuals. At FDA we met with and obtained information from officials of the Center for Food Safety and Applied Nutrition, including its Office of Compliance and Division of Nutrition, and examined past and ongoing proposals to establish standards for cheese analogs, cholesterol labeling, and health claims.

To obtain information on both sides of the pizza cheese controversy, we met with representatives of the two major constituent groups involved, the National Milk Producers Federation, which represents the dairy industry, and the Committee for Fair Pizza Labeling, which represents

manufacturers of frozen pizzas. We also (1) met with or obtained position statements from consumer groups, such as the National Consumers League, Public Voice for Food and Health Policy, and Community Nutrition Institute, as well as cheese and cheese analog producers and pizza manufacturers; (2) analyzed consumer research studies developed and sponsored by the two major constituent groups and by FDA; (3) reviewed laws, regulations, and court cases pertinent to the pizza cheese controversy; and (4) attended hearings on H.R. 3232, a bill on pizza labeling, on September 10, 1987.

To place the pizza cheese controversy in perspective with the larger issues of food labeling, we reviewed prior GAO reports dealing with food labeling issues; discussed the status of prior GAO recommendations and other food labeling issues with FDA and USDA labeling officials; examined the 1969 White House Conference on Food, Nutrition, and Health report, which led to a redefining of food labeling regulatory programs; and met with or spoke by telephone with a National Academy of Sciences official, nutritionists, chemists, and public interest group officials to discuss nutritional and other potential criteria for federal food labeling policies. Except for analyzing court decisions that discussed state labeling regulations, we did not deal with the myriad of state labeling laws and regulations that greatly expand the scope of food labeling questions.

We made our review in accordance with generally accepted government auditing standards.

The Frozen Pizza Cheese Issue: Questions and Answers

The Department of Agriculture and the Food and Drug Administration have different requirements relating to the labeling of frozen pizzas whose toppings include a manufactured cheese analog. Because of concern that the different requirements have resulted in consumer confusion, the Subcommittee Chairman asked us to respond to a series of questions regarding frozen pizza labeling requirements. Our responses to the Chairman's questions follow a brief discussion of the pizza cheese issue and of the major groups involved with the issue.

The Pizza Cheese Issue and the Major Groups Involved

The pizza cheese issue involves the labeling of frozen pizzas whose toppings include a manufactured cheese analog. Major groups involved with the pizza cheese issue are the dairy industry, the manufactured foods industry, FDA, USDA, and consumer/public interest organizations.

The dairy industry argues that consumers expect pizza to contain traditional dairy cheese, a "real" ingredient that has been a part of the human diet for thousands of years. The dairy industry says that cheese analog manufacturers are undercutting dairy farmers' marketing efforts by "masquerading" their product as "real" cheese on meat-topped frozen pizzas. According to the dairy industry, it is important to inform consumers that "real" cheese has been replaced by requiring that the word "imitation" be prominently featured on the principal display panel. (Some frozen pizzas that do not contain manufactured cheese analogs already show on their display panel that they are made with "100% real cheese.")

The manufactured foods industry argues that frozen pizza cheese analogs are safe and wholesome, cheaper to produce than their traditional cheese counterparts, nutritionally equal to traditional cheese, and healthwise superior because they contain less cholesterol. The manufacturers claim that requiring them to highlight the cheese analog on the principal display panel with a negative term such as "imitation" or "substitute" would scare consumers, not inform them. They add that federal law already requires that all ingredients be listed on an ingredient panel on the box and that most consumers use ingredient panel information in making their purchase decisions. Also, the manufacturers claim that the dairy industry's advertising campaign, in which the term "real cheese" is prominently displayed on almost all frozen pizzas that use only traditional cheese, already provides the information needed to differentiate the type of pizza topping in a positive manner.

FDA, which has jurisdiction over non-meat-topped frozen pizzas pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA) (21 U.S.C. 301 et seq.), does not have the authority to require label review prior to the marketing of products. FDA generally limits its label review activities to (1) responding to individual industry requests concerning whether labeling proposals would conform to FDA's general food labeling policies (21 CFR part 101) and (2) post-market label reviews when FDA has reason to believe products are mislabeled. FDA does not have a regulation specific to pizza but does have principal display panel regulatory requirements. FDA also believes that traditional cheese is a characterizing ingredient in pizza. Thus, if the cheese topping on a frozen pizza subject to FDA jurisdiction is not 100 percent traditional cheese, the presence of imitation or substitute cheese must be displayed on the principal display panel.

USDA has jurisdiction under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 et seq.) over meat-topped frozen pizzas. It also has (1) premarket label approval authority, that is, food manufacturers must have USDA-approved labels before they can enter the meat food products into the marketplace, and (2) a regulation that requires meat-topped frozen pizzas to contain traditional cheese, although the regulation does not specify a traditional cheese level. USDA does not require principal display panel disclosure as long as sufficient traditional cheese is present in the cheese mixture to characterize the product. In the late 1970s, USDA administratively drew the line at nine parts cheese substitute to one part traditional cheese. When at least 1 part in 10 is traditional cheese, USDA requires only that the cheese topping ingredients, including the ingredients of the cheese substitute, be listed on the ingredient panel.

USDA's August 1983 proposal to change the labeling requirement for products containing cheese analogs would have resulted in USDA's adopting a prominent display position that was more consistent with FDA's. Although USDA concluded in a 1985 draft analysis that most consumers expect meat-topped frozen pizzas to contain only traditional cheese, it withdrew its August 1983 proposal in April 1987. According to USDA's Notice of Withdrawal, the decision was based on what USDA called "persuasive" arguments presented by a food manufacturer and other parties that opposed the proposal.

Consumer and public interest organizations have taken positions on one side or the other of the pizza cheese issue for reasons of consumer clarity, nutrition, and public policy, as the following examples illustrate.

- One consumer organization, Public Voice for Food and Health Policy, has equated the dairy industry's proposal to requiring that the term "fake butter" be stamped on every margarine package. It has recommended that the Congress require FDA to administratively develop a term for cheese analog that, like the term "margarine," will distinguish the product from a traditional dairy product but not denigrate it.
- The National Consumers League has stated that consumers would be misled by the proposed labeling requirements. It has recommended that USDA undertake consumer research to determine whether consumers believe prominent labeling is necessary or desirable.
- The Community Nutrition Institute, a consumer/public interest organization, has stated that the terms "imitation" and "substitute" accurately reflect consumers' perceptions of fabricated food products and that consumers would welcome prominent display. But at the same time, the Institute has stated that some basic problems exist in the nutritional criteria that FDA uses in setting labeling standards, and it has recommended that the Congress reexamine the current regulatory process.
- The University of Maryland's Center for Business and Public Policy, which studies relationships between effective business management and public policy, has stated that the current pizza cheese controversy is only the "tip of the federal food labeling iceberg." According to the Center, the remedy proposed by the dairy industry would only add to the regulatory confusion. The Center has said that it is time for the Congress to make a long overdue examination of nutritional equivalence and the other bases of federal food labeling policies.

Responses to the Subcommittee Chairman's Questions

Our responses to the Subcommittee Chairman's specific questions regarding frozen pizza labeling requirements, particularly (1) as they relate to cheese and cheese analog toppings and (2) how USDA and FDA regulations may be conflicting and misleading to consumers, are as follows.

How Does the FDA Interpret Its Own Labeling and Standards of Identity Requirements for Cheese as They Apply to Frozen Pizzas With No Meat Toppings?

FDA does not have a specific standard of identity for pizza. Standards of identity assure consumers a degree of conformity among brands; provide a measure of consumer protection by defining the composition of the food; prescribe a recipe—mandatory ingredients as well as optional ingredients; and establish the amounts or relative proportions of these ingredients in food. FDA does have standards of identity for mozzarella cheese, low-moisture mozzarella cheese, low-moisture part-skim mozzarella cheese, and most of the other cheese toppings used on pizzas. The cheese topping listed on a frozen pizza ingredient panel is required to

meet the particular cheese standard. A standard of identity for pizza would describe the basic characteristics that the total product would have to possess to be labeled as a pizza. Examples of other foods that have FDA standards of identity include peanut butter, margarine, and orange juice from concentrate.

FDA Requires Principal Display Panel Labeling of Pizza Cheese Analog

When labeling determinations need to be made for foods such as pizza that do not have standards of identity, FDA seeks guidance from the General Provisions section of its Common or Usual Name for Nonstandardized Foods regulation (21 CFR 102.5(c)), which states that

> "The common or usual name of a food shall include a statement of the presence or absence of any characterizing ingredient(s) . . . when the presence or absence of such ingredient(s) . . . in the food has a material bearing on price or consumer acceptance or when the labeling or the appearance of the food may otherwise create an erroneous impression that such ingredient(s) . . . is present when it is not, and consumers may otherwise be misled about the presence or absence of the ingredient(s) . . . in the food."

On the basis of this provision, FDA's position is that traditional cheese is a characterizing ingredient that is basic to a pizza.

FDA also looks to FFD&CA's misbranded food provision (sec. 403(c), 21 U.S.C. 343(c)), which, in part, states that

> "A food shall be deemed to be misbranded if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word 'imitation' and, immediately thereafter, the name of the food imitated."

On the basis of this provision, FDA policy requires nonmeat pizza to contain all traditional cheese or display on the label that a cheese analog is contained in the product. FDA Office of Compliance officials told us that they would rule on the same grounds if FDA were responsible for overseeing meat pizza labels.

FDA Regulations Narrowed the Meaning of the Term "Imitation"

An FDA regulation (21 CFR 101.3(e)) issued in 1973 narrowed the scope of the term "imitation" as used in section 403(c) of FFD&CA to include only foods that are "nutritionally inferior" to the foods being replaced. According to the regulation, a food that has been judged to be nutritionally equivalent or superior may be called a descriptive term that is not false or misleading, e.g., "substitute." In September 1987, FDA informed the Congress that the term "alternate" would also be acceptable if

accompanied by a description as to how the "alternate" differed from the standardized cheese (e.g., "made with vegetable fat" or "contains less milk fat than cheese"). FDA stated that use of the term "substitute" would also require an accompanying description.

According to the Director, Division of Nutrition, FDA Center for Food Safety and Applied Nutrition, the 1973 regulation was issued in response to (1) two court cases in the 1950s that referred to "imitation" as connoting inferiority and (2) the 1969 White House Conference on Food, Nutrition, and Health. The White House Conference concluded that limiting the use of the term imitation would "encourage" the development and marketing of new or modified products that were not judged to be nutritionally inferior and may even be judged to be superior foods in the marketplace. Products currently labeled as cheese "substitutes" or "alternates" are not nutritionally inferior to the foods they replace.

How Are the USDA Requirements for Labeling and Content of Cheese in Meat Pizzas as Established in the USDA Internal Memorandum Reconciled With FDA Requirements for Labeling of Nonstandardized Cheese-Only Frozen Pizzas?

USDA requirements for labeling and content of cheese in meat pizzas, as set forth in USDA Policy Memorandum 001 and other USDA documents, agree in some respects with FDA requirements and differ in other respects. Both USDA and FDA require the product package to contain an ingredient panel listing all the ingredients in order of predominance. Also, both agencies agree that a pizza marketed as a cheese pizza should contain all traditional cheese and that traditional cheese is a characterizing ingredient of pizza. However, the agencies' requirements are not readily reconcilable when it comes to the labeling of a frozen pizza made with a traditional cheese/cheese analog mixture. FDA requires principal display panel disclosure. USDA does not require principal display panel disclosure unless the traditional cheese/cheese analog mixture on a meat-topped pizza does not contain a minimum of 10 percent traditional cheese, as specified by USDA's Policy Memorandum 001.

How Does USDA Explain Its Reliance on an Internal Memorandum to Establish Its Content and Disclosure Policies?

USDA food labeling policies are established by three levels. The highest level is through legislation. The second level is through regulations promulgated as prescribed by the Administrative Procedure Act (5 U.S.C. 551 et seq.), which requires a proposal published in the Federal Register, a public comment process, and a determination based on an analysis of the pros and cons presented in the rulemaking process. USDA's pizza regulation (9 CFR 319.600) is an example. The third and least formal level is the policy memorandum procedure. Policy memorandums formalize and make public USDA labeling positions on significant or novel issues. But unlike most of USDA's more than 100 current

policy memorandums, Policy Memorandum 001—which sets forth USDA's policy on labeling and content of cheese in meat pizzas—was originally intended to be an interim policy because a planned rulemaking was expected to arrive at a permanent regulatory policy for pizza cheese toppings. The rulemaking that included the proposed pizza cheese regulation was terminated in April 1987, however, and Policy Memorandum 001 remains USDA policy.

Policy Memorandum Procedure Was Developed to Improve the Label Review Process

Policy Memorandum 001, dated May 6, 1980, formalized USDA's labeling policy for cheese toppings on pizzas. USDA implemented its policy memorandum procedure in response to criticism that USDA was not making its policy determinations available to the public.

USDA established the policy memorandum procedure for dealing with significant or novel labeling interpretation issues in response to a 1980 USDA Inspector General report (#38605-1Hq, Feb. 10, 1980). The report concluded that corrective action was needed to bring greater consistency, uniformity, and integrity to the label review process. The report criticized USDA's traditional practice of basing label approvals on unofficial control sheets and other private documents. According to the report, thousands of labels were improperly approved and policy determinations were not consistent.

USDA's internal labeling manual, the "Policy Book," contains label review determinations for thousands of products that deal with such issues as common or usual names of products, minimum meat requirements, required ingredients, and so on. Also contained in the Policy Book are supplementary sheets that briefly state the issues and the policies established by the policy memorandums. The complete memorandums, including a statement of the basis for USDA's position, are available on request from USDA. The Policy Book is updated frequently and is made available to industry and the public upon request. USDA treats the Policy Book as a book of guidelines, retaining the right to change or modify them at any time and recognizing that anyone who disagrees with them has full appeal rights.

USDA published a notification of the procedure for adding "policy memorandums" to the Policy Book in the Federal Register on November 28, 1980, about 7 months after it issued its first Policy Memorandum 001—Subject: Pizzas Containing Cheese Substitutes. As of August 1987, 107 policy memorandums (without the statements of basis for USDA's positions) had been added to the Policy Book. Periodically, USDA publishes a

notice in the Federal Register on the availability of these memorandums and invites public comment.

Policy Memorandum 001 Set a Traditional Cheese Minimum of 10 Percent as Necessary to Characterize a Pizza

Policy Memorandum 001 was developed to bring uniformity to USDA's label approval process concerning the appropriate levels of cheese and cheese substitute on meat pizzas. A USDA regulation (9 CFR 319.600), promulgated in 1970, defines "pizza with meat" as a bread-based meat food with tomato sauce, cheese, and cooked meat topping containing not less than 15 percent raw meat. Therefore, USDA policy is that cheese, along with a bread crust, tomato sauce, and meat are characterizing, and therefore necessary, ingredients in meat-topped pizzas. But the policy does not prohibit the use of cheese analogs to complement traditional cheese. It only requires that sufficient cheese be present to characterize the product.

According to the USDA labeling official most familiar with pizza labeling, the actual cheese content in the cheese/cheese analog topping mixture for labels being approved gradually decreased throughout the 1970s. He said that when cheese analog first became a significant ingredient on pizzas, a typical mixture was about 75 percent real cheese and 25 percent cheese substitute. He said that the downward trend stopped in the late 1970s when one pizza manufacturer requested label approval for a product that contained a mixture of 1.5 percent real cheese to 98.5 percent cheese substitute. He added that the request was not approved on the grounds that the pizza did not contain sufficient cheese to characterize the product in accordance with USDA's standard. He said that at that point USDA decided that until the issue could be formally resolved in pending rulemaking, USDA would draw the line and set a policy requiring that a minimum of 10 percent of the cheese topping mixture be traditional cheese. A mixture of 10 percent traditional cheese and 90 percent cheese substitute was the prevailing usage rate at the time.

FSIS' Standards Branch Chief told us that FSIS may be directed to reevaluate Policy Memorandum 001 if the Congress does not act legislatively on the prominent display issue during the current session.[1] According to the

[1] Language in the House version of the 1987 budget reconciliation bill (H.R. 3545, sec. 1052) would have (1) increased the minimum for traditional cheese from the current 10 percent to 75 percent, i.e., when more than 25 percent of the total cheese topping is cheese analog, its presence would have to be declared on both the ingredient statement and the principal display panel; (2) allowed the term "cheese alternate" to be used in place of "imitation cheese"; and (3) applied to all meat-containing frozen food products. However, the language was dropped during the House/Senate conference on the bill and was not included in the final version. Specific bills on the pizza cheese issue that were pending as of March 21, 1988, included H.R. 2891, H.R. 3232, H.R. 3502, S. 1433, and S. 2145.

Branch Chief, one factor that deserves USDA attention is food technology. She said that manufacturers today can produce cheese analogs with the organoleptic qualities (i.e., taste, feel, smell, and appearance) of real cheese that contain less cheese than the 10 percent requirement of Policy Memorandum 001. She also noted that other policy memorandums have been reevaluated and changed in the past as a result of industry or consumer group recommendations. For example, she said that Policy Memorandum 70 on fat and lean claims was changed as a result of a petition from the Center for Science in the Public Interest.

How Does USDA Explain Its Failure to Issue Labeling Regulations Proposed to Clarify the Content Requirements?

According to USDA's April 1987 notice that it was withdrawing its proposed labeling regulations, the decision was based on "persuasive" comments in opposition to the proposal. USDA's Assistant General Counsel, Regulatory Division, told us that the agency decision to withdraw the proposal was legal because the requirements of the Administrative Procedure Act were followed and a rationale existed for the termination decision. He added that a rational basis also existed for implementing the proposed labeling regulations if the agency had chosen to proceed with that option.

In the withdrawal notice, USDA said that it was persuaded by commenters who pointed out that the use of cheese substitutes is made known to consumers through the ingredient panel and that any costs to be incurred by requiring labeling changes would be unwarranted. USDA specifically cited research results submitted by a large pizza manufacturer that indicated very little difference between traditional cheese and cheese substitutes from either a nutritional or an organoleptic standpoint.

In September 1987 testimony before the House Subcommittee on Livestock, Dairy, and Poultry, the FSIS Administrator focused on the organoleptic basis when he stated that

> "In recent years, we have followed the principle that it is inappropriate to indicate an ingredient in the main display panel unless that ingredient alters the basic characteristics of the product. We have concluded that the use of casein or soy-derived products such as cheese subetitutes or cheese alternates does not 'alter the basic characteristics' of a meat-topped pizza."

He also noted that no market imperfection had been demonstrated; i.e., no evidence was presented showing that consumers were being sold analog-topped pizzas at "real" cheese prices.

USDA and FDA Differ on Organoleptic Issue

USDA first took the position that principal display panel disclosure is not needed in instances where highlighting an alternative ingredient could mislead rather than inform consumers when it promulgated a regulation in 1967 dealing with hot dogs. The regulation allowed hot dogs that traditionally had contained beef and pork to contain up to 15 percent chicken without requiring qualification (9 CFR 319.180). According to USDA's Assistant General Counsel, Regulatory Division, USDA's determination in such a case hinges on a test of whether the analog ingredient changes the organoleptic characteristics of the product.

FDA officials take the opposite view. They state that consumers have the greatest need to be told in situations where consumers cannot tell if the ingredient in question is "real" or "substitute."

Do the Current USDA Labeling and Content Requirements for Cheese on Pizzas Topped With Meat as Established by Their Internal Memorandum Constitute a Standard or Regulation Under the Administrative Procedure Act?

According to USDA's Assistant General Counsel, Regulatory Division, Policy Memorandum 001 is neither a standard nor a regulation, but a guideline. He said that as a guideline, it was not subject to the requirements of the Administrative Procedure Act.

Interpretative rules that clarify or explain existing regulations are not subject to the procedural requirements of the Administrative Procedure Act. (See 5 U.S.C. 553(b)(A).) The Assistant General Counsel said that the memorandum did not establish a new policy. Rather, it was a formalization of prior individual label approvals regarding the cheese substitute issue and, as such, did not require rulemaking. The memorandum set USDA's individual labeling determinations regarding cheese substitute into written policy, and manufacturers and others have full appeal rights if they disagree. The memorandum was written to clarify USDA's position so that USDA label approval personnel could act in a consistent manner and pizza manufacturers could be made aware of USDA's position on the issue. He said that without such a clarification of policy, USDA could be criticized as being arbitrary and capricious. We agree that the 10-percent limit clarifies the existing regulation and therefore can be categorized as a guideline not subject to the Administrative Procedure Act.

Should the FDA Develop a Specific Standard of Identity for "Pizza" to Eliminate Any Uncertainty Over Minimum Compositional Requirements for Pizza Topping and Prevent Potential Products Being Marketed Which Have No Characterizing Ingredients Which the Consumer Has Come to Associate With Pizza?

Given the diversity of pizzas for sale in the marketplace, it may be more practical for FDA to consider developing a definition or standard of composition for frozen pizza or for specific varieties of frozen pizza. Definitions and standards of composition are less confining than standards of identity because they do not establish relative proportions of ingredients in food. They only list the ingredients necessary to characterize the product.

According to FDA Office of Compliance officials, a standard of identity for pizza is not being considered because it is difficult to standardize a product where recipes vary to such a great degree. They noted that because consumer tastes change at a pace that is quicker than the regulatory process and the trend in the marketplace is toward pizza recipes with new types of crust and toppings, the rationale for developing a standard of identity for a pizza is less compelling today than ever. They also emphasized that thousands of products are introduced into the marketplace each year, and consumers do an effective job of weeding out the ones that are not acceptably formulated. The FDA officials added that developing a definition or standard of conformance for frozen pizza or for specific varieties of frozen pizza under the Common or Usual Name for Nonstandardized Foods regulation would be more practical and could help ensure that consumers receive a constant value in pizza products.

According to FDA and USDA labeling policy officials, in addition to increasing the use of cheese substitute in frozen pizzas since the 1970s, a few manufacturers have more recently begun to extend the tomato sauce topping on frozen pizzas with a beet powder and textured starch mixture, and the meat topping with textured soy. An FDA labeling policy official told us that he believes FDA has the authority to take action under existing regulations on the tomato sauce extender situation but that the agency has not taken action to date because of higher priority work. He added that if FDA had a specific regulation stating that tomato sauce in a pizza could not contain extenders, the agency would be more likely to take a position. However, he noted that the current administration has taken a strong position against any new regulations.

What Does the General Accounting Office Recommend to Rectify Any Inconsistencies Between the Two Agencies' Labeling and Standards Regulations to Ensure That Consumers Are Informed About the Cheese Contents of the Frozen Pizzas They Purchase, With or Without Meat Topping?

Rectifying the inconsistencies between FDA and USDA will not be simple. The inconsistencies reflect fundamental policy differences for which there are no clear-cut criteria on which we could base a position. We can, however, present some available options. Two options available to address the pizza cheese issue directly are (1) administratively opening up the rulemaking to hear the respective arguments and make a determination based on existing authorities and (2) legislatively solving the prominent display inconsistency by weighing the respective arguments and considering the public interest.

Some administrative options have been attempted without success. For example, FDA proposed standards of identity for cheese analogs in 1978 but withdrew the proposal in August 1983, citing a lack of industry agreement. USDA's 1983 proposal that would have resulted in USDA's adopting a principal display panel position that was more consistent with FDA's was also dropped due to industry disagreement. To date, neither the dairy industry nor the pizza manufacturers have shown a willingness to compromise through the administrative process on prominent display of cheese analogs or on another appropriately descriptive and understandable term to be used for cheese analogs.

An administrative option that has not been attempted would be for USDA to exercise its authority to exempt products, including frozen meat-topped pizzas, that are not considered traditional products of the meat industry. USDA has authority to require premarket label approval for "meat food products" under FMIA and for "poultry products" under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 457(c)). All labels for meat food and poultry products must be approved by USDA prior to their use by the manufacturers, and USDA has interpreted its authority under FMIA and PPIA to cover most meat- or poultry-containing food products, e.g., meat-topped pizzas, meat-containing TV dinners, and meat turnovers.

But the acts also authorize the Secretary of Agriculture to exempt products from the definitions for meat and poultry products if the products contain minimal portions of meat/poultry or historically have not been considered by consumers as products of the meat/poultry industry. The acts also impose conditions for such exemption. The principal intent of the exemption provisions is to alleviate the necessity for USDA to inspect products with a minimal meat/poultry content. Exempt products are covered under FDA jurisdiction.

Determining how to label frozen pizzas highlights the issue of how to apply 80-year-old laws to modern-day food products. A March 1983 FSIS report, An Analysis of Exemption Provisions of the Meat and Poultry Inspection Laws, questioned whether the authors of FMIA in 1907 would have considered processed products, such as frozen pepperoni pizzas, meat-containing TV dinners, or pork rinds, as products of the meat food industry. The report noted that the historical determination of whether a product was of the meat food industry was based on a test of whether the product was ordinarily purchased from a butcher or whether it was purchased from some other local provider, such as a cafe or creamery. It also noted that USDA has not applied this test. Instead, USDA has based exemptions to the act on what USDA refers to as the "relatively small portion of meat/poultry" basis.

USDA has allowed exemptions for products that contain relatively small portions of meat through an informal policy that exempts products containing less than 3 percent raw meat or 2 percent cooked meat, provided the words "meat," "beef," etc., do not appear in the product name. Examples include salad dressings or canned green beans that contain traces of bacon. Meat-topped pizzas have not been eligible because USDA regulations require that pepperoni and sausage frozen pizza toppings must comprise at least 10 and 12 percent, respectively, of the total product's weight (9 CFR 319.600(b)).

USDA has not allowed exemptions for meat-containing products based on whether the product is a product of the meat food industry. FSIS' Standards Branch Chief told us that she believes most consumers and industry members consider pizza to be a product of the food service industry and that most consumers are surprised to find out frozen meat-topped pizzas fall under USDA's jurisdiction.

Legislative options include either prescribing a single federal policy on prominent display when cheese analogs are used on frozen pizzas or consolidating the regulatory jurisdiction for all frozen pizzas in one agency. During our review, the House of Representatives included in its version of the 1987 budget reconciliation bill provisions that, if enacted into law, could have helped alleviate much of the controversy on pizza cheese substitutes. The provisions, if enacted, would have directed USDA to require prominent display when more than 25 percent of the cheese topping was not traditional cheese. However, as with the other options, the provisions would not have fully resolved all the inconsistencies between FDA and USDA regulations. Appendix I contains additional information on

the administrative and legislative options. The larger issue of appropriate and consistent food labeling is discussed in the next chapter.

Agency Comments

HHS said that it had no comments, other than technical comments, on the draft report. (See app. II.) USDA stated that it believed all frozen pizzas would more logically fit under FDA authority and that it would pursue the option of exempting meat-topped frozen pizzas from its jurisdiction through the regulatory process. USDA also said that it would not pursue a new prominent display rulemaking because it did not believe the outcome would change so soon after the April 1987 proposal withdrawal. (See app. III.)

Frozen Pizza Cheese Issue Typifies Larger Problems With the Food Information System

The frozen pizza cheese issue relates to less than 4 percent of the $15-billion-a-year pizza industry, but it illustrates a series of inconsistencies in federal food information rulemaking. The food information system has not kept up with new food products. Federal food regulations on pizza and other foods are confusing; food labeling decisions have been inconsistent; and a scientific controversy exists regarding nutritional benefits of traditional versus manufactured food products, which will not be resolved in the short term. The result is uncertain consumers and buying decisions that send confused signals back to the industry.

In evaluating the options for resolving the pizza cheese issue, we examined the current legislative authorities, agency regulations, and legal decisions in search of common decision-making criteria. We did not find any common criteria. We found

- differing food labeling decisions, based on inconsistent criteria used by USDA and FDA, that are representative of broader food labeling problems and
- controversy surrounding nutritional issues that underlie regulatory decisions.

These conditions reflect the need to reevaluate and redesign the food information system so that important information about different foods is appropriately communicated to consumers. Although we pointed out this need in a series of reports between 1975 and 1982, and some efforts have been made by USDA and FDA to improve coordination through formal and informal means, the issue of consistent and appropriate food information remains. We believe that congressional action may be needed to help focus efforts on resolving the issue.

Pizza Cheese Regulatory Issues Are Representative of Broader Food Labeling Problems

USDA and FDA have evolved differing positions on the question of principal display panel disclosure when frozen pizzas contain cheese analog. This inconsistency in federal food information rulemaking is not an isolated case. In examining the pizza issue, we identified a number of other problems and inconsistencies in USDA and FDA food labeling regulations and policies. Many of these are generic to federal food information rulemaking. That is, while occurring with pizza, these problems and inconsistencies also relate to the basic principles of all federal food labeling requirements.

One problem involves FDA's application of the term "substitute." In July 1987, FDA objected to a product being marketed as "colby reduced fat

cheese" because the product, which was made with skim milk rather than whole milk, did not meet the butterfat requirement of FDA's colby cheese standard of identity (21 CFR 133.118). FDA wrote the manufacturer stating that the product should be labeled as "colby cheese substitute (or colby cheese alternative)" in order to comply with the regulations. This product's primary ingredient is milk, yet FDA recommended the use of the term "substiuute," the same term that it applies to analog cheese products that substitute vegetable oil for butterfat in the fabricated product.

A second instance involves USDA's definition of meat-topped pizza. Because the definition lists cheese and tomato sauce as required ingredients, USDA could not approve a label for meat-topped "white pizzas," which do not contain tomato sauce but which are currently popular in restaurants. Likewise, a manufacturer interested in marketing a 100-percent "cheese substitute" meat-topped pizza in order to meet the needs of consumers who are allergic to cheese would not be able to label the product as a pizza under USDA regulations because USDA requires that at least 10 percent of a pizza's cheese topping be real cheese.

Another labeling inconsistency relates to USDA's rulings on principal display panel disclosures. Although USDA does not require principal display panel disclosure for a 90-percent cheese analog-topped frozen meat pizza, it does require disclosure in other situations when nontraditional ingredients or nontraditional processes are used. For example, meat or poultry products to which liquid smoke flavoring has been applied (through injection or through direct application of the liquid to the product surface) must be labeled to identify the smoke flavor as part of the product name, e.g., "Ham - Natural Smoke Flavor Added."

Enforcement of food labeling requirements is another problem. According to Office of Compliance officials, FDA does not have a separate budget item for post-market label reviews and does not actively research labels in the market for compliance. FDA relies on competitors or consumers to bring questionably labeled products to FDA's attention. FDA Office of Compliance officials told us that they would require a product labeled vegetarian pizza or vegetarian lasagna to contain all traditional cheese because they consider cheese to characterize these products. However, FDA officials could not provide us with support showing consumers believe traditional cheese is a characterizing ingredient in pizza, lasagna, or any other food product. FDA bases its positions regarding characterizing ingredients on its perceptions of consumers' product expectations and labeling needs. After we showed them a box

labeled vegetarian pizza that contained cheese "substitute" but was not labeled as such, they said that they would not be taking any action to require principal display panel disclosure because limited resources require that FDA focus only on labeling issues that can affect health and on the most flagrant and obvious labeling deceptions.

For this reason FDA may have information that a label does not conform to regulations but not be able to give priority to the situation. A case in point is that some frozen pizza manufacturers use beet powder mixed with food starch and water as an extender to the tomato sauce topping on frozen pizzas. An FDA Office of Compliance official told us that FDA believes consumers expect a pizza to contain all "real" tomato sauce as much as they expect a pizza to contain all "real" cheese but that FDA does not plan to take enforcement action on tomato sauce extenders due to higher priority work.

Differing Decision-Making Criteria Lead to Differing Regulations and Food Labeling Practices

Thus far we have discussed incidents of inconsistent labeling practices that have resulted from (1) two agencies' having different regulations concerning the same food products or (2) a single agency's applying its own regulations in an inconsistent manner. Underpinning the regulations are decision-making criteria for USDA and FDA that are, in some cases, also at odds. When USDA and FDA employ differing decision-making criteria, their positions on food labeling issues stand in contrast. One example of this situation involves the two agencies' positions on evaluating a food product's organoleptic qualities, i.e., whether the analog looks, smells, and tastes like the traditional product.

USDA's position is that requiring prominent display of an alternative ingredient with the same organoleptic qualities as the traditional product could mislead consumers because consumers have learned through USDA's labeling policies that prominent display implies that the product's basic characteristics have been changed. According to USDA's Assistant General Counsel, Regulatory Division, the 1967 case involving hot dogs containing chicken was the first case in which USDA took the position that prominent display is not needed in instances where highlighting an alternative ingredient could mislead rather than inform consumers. In this case, USDA promulgated a regulation allowing hot dogs to contain up to 15 percent chicken without requiring prominent display (9 CFR 319.180).

USDA's test of whether an alternative ingredient alters the basic characteristics of a product was upheld by the U.S. Court of Appeals in a case

that involved "mechanically separated species" (i.e., meat products made in part with meat separated from bones and forcing the resulting paste through a sieve).[1] In its decision, the court ruled that

> "The Secretary was acting at least within the bounds of reason, if not unquestionably correctly, when he determined that prominent labeling of the sort appellants seek would mislead rather than inform, just as it would be misleading (and have a similarly undesirable effect upon a perfectly wholesome product) to require that frankfurters be prominently labeled, 'Made with comminuted meat, including esophagus.' "

In contrast, FDA officials do not focus on organoleptic properties in their prominent display decisions. They base their position on the belief that consumers have the greatest need to be prominently informed of a product ingredient in situations where the consumers cannot tell if the ingredient is "real" or "substitute."

Controversy Surrounds Nutritional Issues Underlying Regulatory Decisions

Providing consistent regulatory actions for food products requires the existence of consistent scientific views that underlie the actions. However, such consistent views are not always available because scientific perspectives on health and diet vary widely. This is especially true in cases that involve the nutritional equivalency of traditional and manufactured foods. Again, the pizza issue serves as an illustration of this generic problem.

On the issue of labeling and nutritional equivalency, USDA and FDA both follow FDA's 1973 regulation dealing with imitation foods (21 CFR

[1]Community Nutrition Institute v. Block, 749 F. 2nd 50 (D.C. Cir. 1984).

101.3(e)), which requires that a food product that is nutritionally inferior to the food product it simulates must be labeled as "imitation."[2] If FDA considers the food product to be not nutritionally inferior, the food product can be labeled as a "substitute" for the food it resembles, another appropriately descriptive term or "fanciful name" that is not false or misleading, or a common or usual name that complies with the provisions of 21 CFR 102 (Common or Usual Name for Nonstandardized Foods). Nutritional inferiority is defined as a reduction in any vitamin or mineral present in a measurable amount (considered to be 2 percent or more of the U.S. Recommended Daily Allowances (U.S. RDAs)). The definition does not include a reduction in the caloric or fat content as being nutritionally inferior. According to FSIS officials, USDA relies on FDA regarding nutritional equivalence questions before making its labeling determinations.

Scientific opinion as to what constitutes nutritional equivalency is divided. The notion of nutritional equivalency is based on the composition of a food in regard to 20 essential nutrients, such as protein, certain vitamins, niacin, and iron, for which FDA has established U.S. RDAs. A substitute food can be declared nutritionally equivalent based on the 20 U.S. RDA nutrients and yet not actually be equivalent to its traditional counterpart because it may contain excess amounts of potentially harmful nutrients, e.g., sodium, or nutrients having a lower absorption rate. On the other hand, some scientists, consumers, and consumer groups consider a food that delivers less sodium or fat and fewer calories but equal levels of the U.S. RDAs to be a superior product.

These arguments are used in the case of pizza cheese analog, as defined by FDA. Pizza manufacturers using cheese substitute state that their

[2]Two state statutes expanding on FDA's "imitation foods" regulation have been struck down in court. Nutritional factors were not considered in the decisions. Kansas and New York passed laws requiring cheese and other dairy analogs to be labeled as "imitation" based on FFDCA, which does not define the term "imitation" or mention the concept of nutritional equivalency. The state statutes were struck down as being in violation of the Supremacy Clause (Article VI) of the Constitution. Under the Supremacy Clause, federal law supersedes state law where the state law (1) conflicts with the federal law so that compliance with both is not possible or (2) is an obstacle to the accomplishment and execution of the federal objective. In both cases the court ruled that FDA's 1973 imitation foods regulation, which differentiates between "imitation" and "substitute" foods, preempted the state laws. Another case involved the interpretation of USDA's pizza regulation (9 CFR 319.600). Wisconsin, while adopting the same regulation, interpreted the word "cheese" to mean only traditional cheese. It therefore required front panel disclosure of cheese analog. The court ruled that under the Supremacy Clause, USDA's pizza regulation interpretation, allowing up to 90 percent cheese analog without a front panel disclosure, controlled. (Committee for Accurate Labeling and Marketing v. Brownback, No. 86-4296-R (D. Kansas July 9, 1987); Grocery Manufacturers of America v. Joseph Gerace, Commissioner, N.Y. Department of Agriculture and Markets, 765 F.2d 288 (2nd Cir. 1985) cert. denied 474 U.S. 820 (1986); Anthony J. Pizza Foods Corp. v. Wisconsin, No. 77-C-101 (W.D. Wis. Mar. 2nd, 1981) aff'd No. 81-1744 (7th Cir. Feb. 16, 1982).)

ingredient meets all the nutritional requirements that FDA has established for cheese and offers the consumer a lower cholesterol product, because the vegetable oil in the product replaces the butterfat in traditional cheese. The dairy industry counters that (1) "real" dairy cheese contains trace nutrients not included in FDA's U.S. RDAs; (2) a new body of research points to omega-6 fatty acids in vegetable oil as a contributing factor to heart disease; (3) cheese analogs use hydrogenated vegetable oils, which, according to some researchers, have about the same saturated fat equivalence content as butterfat;[3] and (4) cheese analog pizzas are typically higher in sodium than traditional cheese pizza.

According to the Director, Division of Nutrition, FDA Center for Food Safety and Applied Nutrition, FDA's position is that (1) nutrients generally accepted to be essential but which are not yet covered by existing U.S. RDAs are widely available in other foods and (2) most nutritionists would agree that the potential for experiencing a deficiency of any of these nutrients in healthy individuals is extremely low. According to the Director, FDA is prepared to propose U.S. RDAs for additional nutrients when the scientific community reaches a consensus on recommended dietary allowances. On the issue of the body's ability to absorb different nutrients, he said that methods of assessing absorption lack general acceptance in the scientific community.

On the issue of the effects of hydrogenated vegetable oils in regard to heart disease, the Acting Director, FDA Center for Food Safety and Applied Nutrition, said that it is important to realize that the same health concerns that apply to saturated fats generally apply to unsaturated fats that have, in effect, become saturated through hydrogenation. The Director, Division of Nutrition, said that the new body of research on omega-6 fatty acids is not widely accepted within the scientific community. He said that omega-6 research is a part of a worldwide research effort on the relationship between cholesterol and heart disease that may take 10 years or more to complete. He added that FDA generally looks for scientific consensus before taking a regulatory action based on

[3]The British government has recently issued voluntary nutrition labeling guidelines that are similar to FDA's voluntary nutrition labeling regulations (21 CFR 101.9(c)(6)) in that companies that choose to list nutritional information are required to show the levels of fat, which can be further broken down to show saturated and unsaturated fatty acids. But unlike the U.S. regulations, the British guidelines require that trans fatty acids (which form when the hydrogenation process causes changes in the molecular structure of unsaturated fatty acids) be identified as "saturated equivalents" because they are metabolized more like saturated than unsaturated fatty acids. According to research performed at the University of Maryland, when the trans fatty acids in cheese analog (primarily from hydrogenated vegetable oil) are added to the saturated fatty acid count, the result is about the same fatty acid composition as that found in traditional cheese.

new scientific information showing that a substitute food is inferior to the traditional food it is replacing.

Resolving Food Labeling Inconsistencies Overall

Communicating accurate food information is important if both market information operations and consumer/producer decisions are to be improved. In a series of reports between 1975 and 1982,[4] we cited numerous examples of duplicative, conflicting, and confusing food information regulations and programs. For example, in 1980, we reported that USDA and FDA had a total of 119 regulations (35 for FDA and 84 for USDA) covering consumer economic protection and/or product safety.[5] In an attempt to act as a catalyst, we presented a framework whereby the federal government would take the lead in addressing food information issues. We recommended that a consortium of key federal government officials take the lead in working with the food industry, consumers, food retailers, health care specialists, the media, and educators to develop a coordinated, workable approach to collecting and disseminating food information. USDA and FDA have made some coordination efforts, but the public/private working arrangement that we envisioned did not develop. The controversies underlying the pizza cheese situation (e.g., piecemeal food legislation and regulations, nutritional equivalence, organoleptic considerations, nomenclature problems, and consumer research needs) are not product specific; they involve the fundamental principles underlying all federal food labeling requirements. Accordingly, they point to a continued need for consistent and effective food labeling policies.

Consumers Need Concise, Clear Information

In 1980 reports, Comments on Proposed Food-Labeling Regulations and Comments on Food Advertising Proposals, we said that the existing nutritional labeling system, based on piecemeal legislation requiring frequent changes, was an expensive approach and one that failed to meet

[4]Food Labels—Do They Tell Enough? (MWD-75-19, Jan. 29, 1975); National Nutrition Issues (CED-77-7, Dec. 6, 1977); National Nutrition Issues: Federal Agencies Should Do Better (CED-78-75, Mar. 22, 1978); What Causes Food Prices to Rise? What Can Be Done About It? (CED-78-170, Sept. 6, 1978); Recommended Dietary Allowances: More Research and Better Food Guides Needed (CED-78-168, Nov. 30, 1978); Maze of Food Regulations—Need for a Regulation Indexing System (CED-80-44, Feb. 4, 1980); Comments on Proposed Food-Labeling Regulations (CED-80-59, Apr. 21, 1980); What Foods Should Americans Eat? Better Information Needed on Nutritional Quality of Foods (CED-80-68, Apr. 30, 1980); Comments on Food Advertising Proposals (CED-81-27, Nov. 7, 1980); Emerging Issues From New Product Development in Food Manufacturing Industries (CED-81-136, Aug. 19, 1981); and Informing the Public About Food—A Strategy Is Needed for Improving Communication (CED-82-12, Jan. 8, 1982).

[5]Maze of Food Regulations—Need for a Regulation Indexing System (CED-80-44, Feb. 4, 1980).

consumer needs. We noted that it would be appropriate to reevaluate the food information system and to make changes based on data derived from well-designed consumer research. We also noted that the method of solving U.S. nutrition information and education problems should not be based on developing extensive regulations, but rather should focus on an open dialogue among consumers, industry, government, and others interested in the area.

In a 1982 report, Informing the Public About Food—A Strategy Is Needed for Improving Communication, we reemphasized the need for an open dialogue among all affected parties. We reported on the increasing importance of understanding food information, as more food products were appearing in the market. We noted that federal food information, regulations, and programs had multiplied rapidly in the preceding decade but that some of the efforts resulted in conflicting, confusing, and duplicative information. We recommended that USDA, FDA, and the Federal Trade Commission take the lead in forming a joint public/private partnership to build a new food information strategy.

The agencies basically agreed with our conclusions but, in response to our recommendation, provided alternative proposals for improving federal food information policies and programs. The Federal Trade Commission staff believed that a cooperative effort already underway would achieve many of the objectives the report advocated. USDA believed the best way to improve information communication and cooperation was by strengthening existing programs, such as its Human Nutrition Information Service, and by increasing cooperative efforts with the private sector. FDA also believed the best way to achieve the report's objectives was through strengthening existing programs, but in more recent discussions, FDA officials told us that they believe it may be time to get industry more involved in updating food regulations. For example, FDA Office of Compliance officials told us that many standards of identity requirements, such as butterfat levels for dairy products, would be more flexible if developed today.

Since 1982 the trend toward more food products and increased food information has continued. The almost 3,400 new food products introduced in 1986 was over 3 times the 1982 level and nearly 5 times the 1975 level; consumers are demanding greater convenience, variety, and nutritional information; and food manufacturers are beginning to use health claims in their advertising. According to a National Academy of Sciences Board of Agriculture staff officer, most new foods, ranging from soft drinks to frozen entrees, are fabricated, formulated, enriched,

or fortified in some manner, which complicates the process of deciding what information the consumer needs to know. For example, she told us that many reduced fat products may have drawbacks that may not be apparent to the consumer, such as increased sodium levels. On the health claims issue, she said that the criteria for evaluating the propriety of health messages have yet to be clearly established.[6]

Observations

To facilitate commerce and to satisfy consumers' desires to purchase the best foods for their needs, consumers need the most concise, clear information possible. The current pizza cheese situation illustrates many generic problems in federal food labeling requirements. On the surface, whether or not to require prominent display of cheese analogs on meat-topped frozen pizzas appears to be a simple question. But no simple solution exists because federal food labeling criteria are not clear-cut. The larger concern is determining what information consumers need to know and how to best communicate that information.

Options for developing consistent and effective labeling policies include establishing a congressional commission, a presidential commission, or an interagency task force that would bring together government, industry, and consumer interests in order to review and rewrite the basic authority for food information. The goal would be to provide a body of law that can keep current with new foods, manufacturing processes, and consumer needs. Underlying issues that need to be reexamined include split jurisdiction for similar products with and without meat, regulatory requirements for the concept of nutritional equivalence, interagency differences concerning organoleptic considerations, nomenclature problems, and the level of consumer research needed to design an effective food information system. A possible first step to this process would be to hold congressional hearings to more fully determine the extent of current regulatory activity, agency structures that administer the regulatory process, industry and consumer responses to and reliance on the process, and agency activities or plans to improve the process.

[6]An in-depth analysis of policy and research issues and consumption trends of animal products are presented in an upcoming report, Designing Foods: Animal Product Options in the Marketplace, to be published in April 1988 by the Board on Agriculture, National Academy of Sciences.

Matter for Consideration by the Congress

The Congress may want to bring together government, industry, and consumer interests in order to review and rewrite the basic authority for food information. Ways of doing so include establishing a congressional commission, recommending a presidential commission, or directing an interagency task force. As a preparatory step, the Congress may wish to hold hearings to more fully determine the extent of current regulatory activity, agency structures that administer the regulatory process, industry and consumer responses to and reliance on the process, and agency activities or plans to improve the process.

Agency Comments

HHS did not comment on the issue of reconsidering the adequacy of the overall food information system. (See app. II.) USDA stated that it does not recommend that standards and labeling issues be resolved through the legislative process. (See app. III.) Although our report recognizes that a legislative solution is an option to resolving the frozen pizza prominent display issue, we are not suggesting that the Congress act as an arbitrator in resolving the many food information issues that arise. We are only suggesting that the Congress act as a catalyst to begin the process of developing a coordinated, workable approach to collecting and disseminating food information. The end result may well be a revision to the basic legislative authority for food information.

Administrative and Legislative Options for Resolving Frozen Pizza Cheese Issue

Options available to address the pizza cheese issue directly are (1) administratively opening up the rulemaking to hear the respective arguments and make a determination based on existing authorities or consolidating the regulatory jurisdiction for all frozen pizzas in one agency and (2) legislatively solving the prominent display inconsistency by weighing the respective arguments and considering the public interest.

Option 1: Administrative Action

Administrative options include USDA's and FDA's initiating a new rulemaking procedure to arrive at one federal position on the issue of labeling frozen pizzas whose toppings include a manufactured cheese analog or consolidating in one agency the regulatory jurisdiction for all frozen pizzas.

Factors to be considered in initiating a new rulemaking procedure are as follows:

- An FDA definition or standard of composition for frozen pizza could help maintain the intrinsic value consumers expect in a pizza by preventing products from being marketed that lack characterizing ingredients that most consumers associate with pizza.
- Through requesting public opinion the regulatory agencies could find out if consumers' views as to what they expect in pizza products are being properly read. For example, more restaurants today are using nontraditional cheese toppings on pizza, such as soft cheeses, processed cheeses, or hard cheese other than mozzarella. "White pizza," which does not contain sauce and may or may not contain cheese, has become increasingly popular in restaurants. Also, more food products are being marketed with meat extenders (such as textured soy) and sauce extenders (such as beet powder mixed with textured starch). Through the public comment process, the agencies could find out if consumers will (1) accept these products as "pizzas" when they reach the frozen food case; (2) prefer that unexpected ingredients be named both on the principal display panel and on the ingredient panel; or (3) prefer that appropriately descriptive and understandable terms other than "pizza," "cheese substitute," etc., be used.[1]

[1]Language in the House version of the 1987 budget reconciliation bill (H.R. 3545, sec. 1052) would have directed the Secretary of Agriculture to approve new common or usual names for cheese analog containing products. The language was not included in the final version of the bill.

- Another regulation could add to the maze of piecemeal federal food information programs and regulations that helped lead to the degree of confusion that currently exists for pizza cheese.
- Once a regulation is set, changing it is an arduous process that regulatory agencies try to avoid. As a result, regulations frequently have trouble keeping up with consumer trends. For example, a pizza manufacturer could not label a "white pepperoni pizza" as such today because, according to USDA's regulations, a pizza with meat must contain cheese and tomato sauce.
- It would be difficult to obtain industry agreement on a proposed regulation. For example, FDA proposed standards of identity for cheese analogs in 1978 but withdrew the proposal in August 1983, citing a lack of industry consensus. To date, neither the dairy industry nor the pizza manufacturers have shown a willingness to compromise through the administrative process on prominent display of cheese analogs or on another appropriately descriptive and understandable term to be used for cheese analogs.

Factors to be considered in consolidating the regulatory jurisdiction for frozen pizzas are as follows:

- Frozen pizza might more logically fit under FDA's regulatory authority than under USDA's specific meat and poultry inspection authority.
- The Federal Meat Inspection Act gives the Secretary of Agriculture authority to exempt meat-containing products from the act's premarket label approval requirement if the product historically has not been considered a product of the meat food industry. Exempt products are covered under FDA jurisdiction.
- FDA, which bases its decisions as to what constitutes a characterizing ingredient on its interpretations of consumer perceptions, takes a different position than USDA on organoleptic considerations. FDA believes consumers have the greatest need to be told that an expected ingredient has been replaced when the alternative ingredient has the same organoleptic characteristics as the expected ingredient being replaced. FDA's present interpretation of consumer perceptions of frozen pizzas is that consumers expect real cheese and real tomatoes, and FDA requires disclosure on the display panel if the products contain ingredients other than those characterizing ingredients.
- Because FDA does not have premarket label approval authority, it relies primarily on complaints to identify regulatory inconsistencies. But due to limited resources and higher priorities, FDA does not actively enforce its display panel disclosure requirements for pizzas not containing all real cheese and all real tomato sauce.

- FDA does not perform consumer research studies as bases for its positions on consumer perceptions. FDA's views on consumer perceptions are based on the views of a few headquarters policy staffers, which may or may not reflect the views of the general population.

Option 2: Legislative Action

The principal display panel disclosure inconsistency could be solved legislatively by prescribing a single federal policy on prominent display when cheese analogs are used on frozen pizzas.

Factors to be considered in prescribing a single prominent display policy are as follows:

- According to USDA's 1985 draft analysis, most consumers believe frozen meat-topped pizzas contain traditional cheese, while in actuality most are made with a blend of up to 90 percent cheese analog. Requiring prominent display of the term "imitation cheese," "cheese substitute," or "cheese alternate" would inform consumers that the pizzas contain something other than traditional cheese.
- The term "cheese substitute" is already in use on most ingredient panels of meat-topped frozen pizzas.
- The option of directing USDA to require prominent display has been proposed in H.R. 2891, H.R. 3232, H.R. 3502, S. 1433, and S. 2145 and was in the House version of the budget reconciliation bill (H.R. 3545).
- Legislation requiring prominent display of the term "imitation" for any cheese analog would conflict with existing FDA regulations. Section 403(c) of FFD&CA states that a food which resembles and is intended to substitute for another food shall be deemed to be misbranded "unless its label bears, in type of uniform size and prominence, the word 'imitation' and, immediately thereafter, the name of the food imitated." However, a 1973 FDA regulation narrowed the scope of the term to include only foods that are "nutritionally inferior" to the foods being replaced. (Products that have not been judged nutritionally inferior can use the term "substitute" or another term that is not false or misleading.) Labeling all cheese analogs as "imitation" could lose the nutritional distinction that the FDA regulation establishes.
- According to a 1981 FDA-funded study by Louis Harris and Associates, the term "substitute" has a very negative connotation in consumers' minds, almost as negative as the term "imitation," which, according to FDA regulations, connotes nutritional inferiority. Thus, according to the FDA-sponsored study, while consumers would be made aware that cheese analog is present in the product, requiring the term "substitute" could hurt commerce due to consumers' misunderstanding the term.

Comments From the Department of Health and Human Services

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

FEB 16 1988

Mr. Richard L. Fogel
Assistant Comptroller General
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

The Secretary asked that I respond to your request for the Department's comments on your draft report, "Food Marketing: Frozen Pizza Cheese--Representative of Broader Food Labeling Issues." The Department has carefully reviewed your report and has no comments to make other than some technical comments which were provided directly to your staff.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

Richard P. Kusserow
Inspector General

GAO Comments

1. Because the comments were technical in nature, we did not reprint them here. However, we made changes in our report when appropriate.

Comments From the U.S. Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

February 6 1988

Mr. Brian P. Crowley
Senior Associate Director
Resources, Community and Economic
Development Division
United States General Accounting Office
Washington, DC 20548

Dear Mr. Crowley:

Thank you for the opportunity to respond to your December 29, 1987, letter enclosing a copy of your draft report entitled "Frozen Pizza Cheese: Representative of Broader Food Labeling Issues." The report presents a good comparison of our Department and the Food and Drug Administration's (FDA) policies on labeling frozen pizzas containing cheese analogs.

The report has been carefully reviewed by the Food Safety and Inspection Service (FSIS) and based on their review we offer the following comments.

See comment 1.

We believe that the report misrepresents FSIS's policies in that it states the Agency does not require prominent disclosure of the use of cheese analogs, when such analogs are not nutritionally inferior to cheese. The Agency does not use nutritional criteria to determine whether the use of cheese substitutes must be indicated on the principal display panel. We solely rely on the 1:9 ratio as a point below which the quantity of real cheese is insufficient to characterize the product. The Agency's position is when there is insufficient cheese to characterize the product, i.e., less than the 1:9 ratio, disclosure of the use of cheese substitutes must appear on the label's principal display panel.

See comment 2.

Your report references a provision in pending legislation (H.R. 3545) that would require a change in FSIS's current policies for labeling of cheese substitutes. This provision was removed from the bill before it was signed into law; therefore, you may wish to consider whether the potential impact of the provision is still relevant to this report.

See comment 3.

The draft states that nutrition scientists have not established specific human requirements for fat or sodium. Although there are no U.S. Recommended Daily Allowance (RDAs) for these nutrients, the Food and Nutrition Board of the National Research Council, National Academy of Sciences, acknowledges specific human requirements for sodium and the essential fatty acids in its Recommended Dietary Allowance.

See comment 4.

The first factor under Option 2: Legislative Action, on Page 56 of your report, states that USDA's analysis showed that, in 1985, about 75 percent of meat-topped pizzas contain a blend of 90 percent cheese substitute. Our analysis indicated these pizzas contained a blend of up to 90 percent cheese substitute.

See comment 5.

The report indicated that GAO was told that FSIS may reevaluate Policy Memorandum 001 (copy enclosed), if the Congress does not act legislatively on the prominent display issue during the current session. Although the footnote to this statement somewhat explains that the intent of the statement was that H.R. 3545 would require USDA to (1) increase the minimum for traditional cheese from the current 10 percent to 75 percent, i.e., when more than 25 percent of the total cheese topping is cheese analog, its presence must be declared on both the ingredient statement and the principal display panel; (2) allow the term "cheese alternates" to be used in place of "cheese substitute"; and (3) apply to all meat-containing frozen food products. Therefore, the statement in isolation falsely implies that FSIS was considering a revision to the Policy Memorandum. I suggest that the wording in the report be changed to clarify the statement. Currently, FSIS does not plan to reevaluate the Policy Memorandum, but would, of course, comply with any Act of Congress.

In regard to the report's recommendations, the Department has gone through the rulemaking process on the cheese pizza issue and was persuaded that changing our current policies is unwarranted. We do not believe that repeating this process will provide a different resolution so soon after our last effort. We do agree with your statement that frozen pizzas would more logically come under FDA's authority and are willing to consider this as part of a regulation currently being developed addressing which meat food products should be exempt from the Department's inspection requirements. We do not recommend the resolution of standards and labeling issues through the legislative process.

I hope the comments offered will be helpful to you and your staff in preparing the final report.

Sincerely,

Richard E. Lyng

Richard E. Lyng
Secretary

Enclosure

cc:
J. Ebbitt, Asst. Insp. Gen. for Audit, OIG
S. Dewhurst, Director, OBPA

U.S. DEPARTMENT OF AGRICULTURE

Memorandum

FOOD SAFETY AND QUALITY SERVICE

POLICY MEMO 001

TO : Branch Chiefs

DATE: MAY 6 1980

Robert G. Hibbert

FROM : Robert G. Hibbert, Acting Director, NPSLD

SUBJECT: Pizzas Containing Cheese Substitutes (9 CFR 319.600)

Issue: Appropriate labeling requirement for pizza products containing both cheese and cheese substitutes.

Policy: Labels which contain cheese in a ratio of at least one part per nine parts cheese substitute and which otherwise comply with the requirements of the standard may be approved. Labels of product with cheese in smaller amounts must contain additional qualifying information.

Basis: The current regulation specifies cheese as a necessary characterizing ingredient in product to be labeled pizza. It does not specify percentages nor does it address questions regarding the use of cheese substitutes. Informal policy has evolved which has permitted label approvals without qualifying information, as long as the product contains some cheese, but concerns have developed that consumers might be misled by labels of products in which the actual cheese content is very low. These issues may not be fully resolved until the completion of pending rulemaking. Nevertheless an interim policy decision is necessary to assure that product is not misbranded. This policy should assure that the product is sufficiently characterized by cheese ingredient without imposing any substantial burden upon those who have relied on the policy as it has developed to date.

FSIS FORM 5000-6 (6/79)

The following are GAO's comments on the U.S. Department of Agriculture's letter dated February 26, 1988.

GAO Comments

1.The statement that USDA uses nutritional criteria to determine principal display panel requirements was deleted from the report.

2.The report was revised to show that the language in the House version of the 1987 budget reconciliation bill (H.R. 3545, sec. 1052) was not included in the final version of the bill.

3.References to minimum human requirements for fat and sodium were deleted from the report.

4.The words "up to" 90 percent were added to the report.

5.The statement was changed to reflect that FSIS does not plan to reevaluate Policy Memorandum 001 but will do so if "directed to" by the Congress.

Major Contributors to This Report

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